IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 12.10.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.MANIKUMAR

W.A. Nos.603, 604, 967 & 990 of 2006
and
W.A.M.P. Nos.1241, 1242, 1613 & 1618 of 2006

W.A. Nos.603 & 604 of 2006

1. The Government of Pondicherry
rep. by Secretary to Government,
Local Administration Secretariat,
Pondicherry.

2. The Commissioner,
Pondicherry Municipality,
Pondicherry. ... Appellants/ Respondents

vs.

S.Muthukumaraswamy ... Respondent in
WA No.603 of 2006.
(Petitioner)

R.Arumugam ... Respondent in
WA No.604 of 2006.
(Petitioner)

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W.A. No.967 of 2006

1. The Union Territory of
Pondicherry through the
Chief Secretary,
Pondicherry.

2. The Under Secretary to Government,
Public Administration Department,
Pondicherry.

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3. The Commissioner,
Pondicherry Municipality,
Pondicherry. ... Appellants / Respondents

vs.

M.M.Dinesh ... Respondent/ Petitioner

W.A. No.990 of 2006

Pondicherry Municipality,
rep. by its Commissioner,
No.1, Rue Dumas,
Pondicherry. ... Appellant (Respondent)

vs.

M.M.Dinesh ... Respondent (Petitioner)

Appeals against the orders of the learned single Judge dated 11.2.2006 made in W.P. Nos.39280, 39281, 34460 and 34461 of 2005
W.A.No.603/2006 in W.P.39280/2005 W.A.604/06 in W.P.39281/05
Writ Petitions filed under Article 226 of the Constitution of India praying for issue of a writ of certiorarified Mandamus calling for the records of the second respondent (i) relating to his order dated 30.11.2005 in PM/RO-II/CS/62-15/2005 and quash the said order and consequently direct the respondents to renew the licence to the petitioner for using the premises at 4/14 Kamaraj salai Pondicherry as a place of public resort for conducting classical dance programme.
W.A.604/06 in W.P.39281/05 (ii) relating to his order dated 30.11.2005 in PM/RO-II/CS/62-12/A4/2005 and quash the said order and consequenly direct the respondents to renew the licence to the petitioner for using the premises 534, III Floor, Anna Salai, Pondicherry 605 001 as a place of Public resort for conducting Madras Dance Programme.

2. Writ of certiorarified Mandamus to call for the records of the 2nd respondent in their order in G.O.Ms.No.27/LAS/2005 dated 20.9.2005 and quash the same and may grant such other reliefs. (W.A.967/2006 in W.P.34460/2005)

3. Writ of Certiorarified Mandamus to call for the records of the respondent in his order in No.PM/RO-II/97/A4/2003 dated 21.9.2005 quash the same and direct the respondent to issue a licence to the Petitioner for the purpose of holding Indian Classical Dance at Hotel Al Rasheed Citadal at Door No.1, 100 feet Road, Ellapillai Chavady, Pondicherry-5. (W.A.990/2006 in W.P.34461/2005)

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For Government of Pondicherry/appellants : Mr.T.Murugesan, Govt. Pleader (Pondicherry) assisted by K.K.Sashidharan, Additional Government Pleader.

For Respt. in WAs.603 and 604 of 2006 : Mr.R.Yashodvardhan

For Respt. in WAs.967 and 990 of 2006 : Mr.K.Doraisami, Senior Counsel for Mr.R.Sunilkumar.

COMMON JUDGMENT

P.SATHASIVAM, J.

Since the issue involved in all these Writ Appeals is one and the same, they are being disposed of by the following Common Judgment.

2. The Union Territory of Pondicherry and the Commissioner, Pondicherry Municipality, aggrieved by the identical but separate orders of the learned single Judge, quashing the 'prohibition portion' of the impugned Government Order in G.O.Ms.No.27/LAS/2005, dated 20.09.2005, and directing the Commissioner, Pondicherry Municipality, to consider the application of the Writ Petitioners for renewal of licence to use their premises as a place of public resort for conducting classical dance programmes and to pass orders thereon within a period of 8 weeks from the date of receipt of copy of the said order, filed the above Writ Appeals.

3. For the sake of convenience, we shall refer the case of S.Muthukumaraswamy, Proprietor of Fillo Hotel, petitioner in W.P. No.39280 of 2005.

The said Muthukumaraswamy is the sole proprietor of Fillo Hotel, running hotel business at Door No.4/14, Kamaraj Salai, Pondicherry. The grievance of the writ petitioner/respondent is that the licence held by him for conducting classical dance programmes in his hotel, which was valid upto 30.11.2005, has not been renewed further and his application for renewal of the said licence was rejected by the Pondicherry Municipality by order dated 30.11.2005. The main ground of the writ petitioner/respondent is that the Municipal Authorities cannot reject the application for renewal of the licence by taking resort to the Government Order in G.O.Ms.No.27/LAS/2005, dated 20.09.2005, and that the writ petitioner has a unfettered right to claim the renewal of licence by virtue of Section 349 of the Pondicherry Municipalities Act,

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1973, and that, having regularly paid the necessary fees and taxes for the purpose of holding such classical dance programme in their Hotel, the authorities concerned cannot deny the request for renewal of the existing valid licence for a further period.

The respondents/appellants filed a counter affidavit and contested the matter.

It is the case of the Government of Pondicherry and the Municipality that the Government, by taking a policy decision, passed G.O. Ms.No.27/LAS/2005, dated 20.09.2005, by virtue of which, grant of fresh licences for holding dance shows and floor shows in public premises such as hotels, etc. was prohibited. The said Government Order proclaimed that there shall not be issuance of fresh licence for performing Indian classical dance, western dance and floor shows. On the basis of the said Government order, the licences of Sun Guest House and Fillo Hotel, which were valid till 30.09.2005, were not renewed. It is further stated that, under the Rules of Business of the Union Territory under Section 46 (1) of the Union Territories Act, 1983, the Minister concerned is competent to issue direction, hence, the said Government Order is valid and operative.

Learned single Judge, who heard the Writ Petition along with connected W.Ps., after considering the Government Order in G.O.Ms.No.27/LAS/2005, dated 20.09.2005, quashed a portion of the said order to the extent it prohibits the authorities from issuing any fresh licence in so far as the performance of Indian classical dance is concerned on the ground that it is an infringement of the fundamental right guaranteed by the Constitution of India. By quashing a part of the Government Order, the learned Judge also quashed the consequential orders of the Pondicherry Municipality and directed the Commissioner, Pondicherry Municipality, to consider the application of the petitioner for renewal of licence afresh and pass orders thereon within a period of 8 weeks from the date of receipt of a copy of the order.

4. Questioning the orders, quashing a portion of G.O.Ms.No.27/LAS/2005, dated 20.09.2005, and the consequential orders passed by the Commissioner, Pondicherry Municipality; the Government of Pondicherry and the Commissioner, Pondicherry Municipality, have filed the above Appeals.

5. Heard Mr. Mr.T.Murugesan, learned Government Pleader (Pondicherry), for the appellants; Mr.R.Yashodvardhan, learned counsel for the respondents in W.A. Nos.603 and 604 of 2006; and Mr.K.Doraisami, learned Senior Counsel for the respondent in W.A. Nos.967 and 990 of 2006.

6. Mr.T.Murugesan, learned Government Pleader (Pondicherry), at the foremost, submitted that the learned Judge,

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having upheld the validity and legality of G.O.Ms.No.27/LAS/2005, dated 20.09.2005, and having observed that the power exercised by the Government in issuing the said G.O. is absolute and cannot be interfered with by the Court, committed an error in quashing the order to the extent it prohibits the authorities from issuing any fresh licence insofar as the performance of Indian classical dance on the ground that it infringed the fundamental right guaranteed under Article 19(1)(g) of the Constitution of India, hence, quashing a portion of a valid Government Order is unwarranted.

He strenuously contended that renewal of licence is not automatic as claimed by the respondents/petitioners, therefore, when the statute itself does not confer any vested right to demand for renewal of licence, the question of infringing upon the fundamental rights guaranteed under Article 19(1)(g) of the Constitution of India does not arise. According to him, the learned Judge failed to take note that the impugned Government Order imposes only a reasonable restriction and it is not a total prohibition on the right of the respondents to carry on the hotel business. He further contended that the learned Judge ought to have considered the fact that the other provisions of the Pondicherry Municipalities Act do not in any manner interfere with the right of the Municipality to decline the grant of/renewal of licence on the ground of public order, decency, morality etc.

It is further argued that there was a proper exercise of statutory powers by the appellants in refusing to renew the licence issued to the respondents. According to him, the learned Judge, while on the one hand proceeded in a right and proper perspective by upholding the need and obligation on the part of the Government to maintain purity, decency and morality in the matter of public life and to take all steps to avoid indecency and immorality being developed and encouraged, on the other hand, has erred in quashing the prohibitory part of the impugned Government Order and directing the authorities to consider the request of the respondents for renewal of licence.

Learned Government Pleader also pointed out that the Municipality is taking action against all the persons similarly placed. Since some of the hotel owners obtained prohibitory orders from the Civil Court, in obedience to such orders, no action is being taken for the present.

7. On the other hand, Mr.R.Yashodvardhan, learned counsel and Mr.K.Doraisami, learned Senior Counsel, appearing for the respective respondents, vehemently contended that the impugned Government Order infringes the right of the respondents/writ petitioners to carry on trade or business as provided under Article 19(1)(g) of the Constitution. According to them, the prohibition portion of the Government Order and the consequential orders of the

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Commissioner, Pondicherry Municipality, refusing to renew the licence granted earlier, have been rightly quashed by the learned Judge, hence, there is no ground for interference.

8. Before going into the rival contentions, it is useful to refer to the Government Order in G.O.Ms. No.27/LAS/2005, dated 20.09.2005, and the consequential orders of the Commissioner, Pondicherry Municipality.

A. The said Government Order reads as follows:-

" GOVERNMENT OF PONDICHERRY
(Abstract)

Local Administration Secretariat - Municipal License for conduct of the Entertainment - Banning of conduct of all kinds of dances - Order issued

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LOCAL ADMINISTRATION SECRETARIAT

G.O.Ms.No.27/LAS/2005 Pondicherry dated 20.09.2005

ORDER:

WHEREAS under Section 349 of Pondicherry Municipalities Act, 1973, read with Pondicherry Municipalities (Places of Public Resort and Entertainments), Rules 1980 applications are being received for grant of licenses for performing Indian classical, western dances and floor shows.

2. WHERAS, in term of Section 349(3) (a) of Pondicherry Municipalities Act, 1973, G.O.No.383, dt.30.12.1976 of Local Administration Department was issued.

3. WHEREAS, the Government of Pondicherry is satisfied that it is not in public interest to grant any further licenses for the purposes mentioned above. Therefore, the Municipal Authorities are directed not to issue any fresh license for the above mentioned purposes in any permanent buildings, as defined under Rule 2 (c) of Pondicherry Municipalities (Places of Public Resort and Entertainments) Rules, 1980.

By Order
K. Nagalingam,
Under Secretary to Govt (LA) "

B. S.Muthukumaraswamy/Proprietor of M/s.Fillo Hotels filed a petition, dated 21.11.2005, praying for renewal of the licence in

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respect of his hotel for conducting classical dance programmes. The Commissioner, Pondicherry Municipality, by proceedings dated 30.11.2005; after recording factual findings to the effect that obscene dances are being conducted and the audience take resort to acts of violence, giving rise to law and order problem; and by holding that with a view to safeguard public morale and decency in the premises in respect of which licences are granted, they are not any more permitted to be used for performing any kind of dance programme on term basis; and also by making reference to G.O.Ms. No.27/LAS/2005, dated 20.09.2005, wherein the policy decision of the Government has been expressed not to renew the licence; refused to renew the licence granted to the Hotel run by S.Muthukumaraswamy. The said Government Order as well as the consequential rejection orders of the Commissioner, Pondicherry Municipality, were challenged by the hotel owners by way of writ Petitions. Though the learned Judge upheld the action of the Pondicherry Administration, however, observed that without amending the Act, they cannot prohibit the performance of classical dance programmes, and issued directions to the commissioner to consider the application of the petitioners for renewal of licence afresh.

9. Now, let us consider the relevant provisions of the Pondicherry Municipalities Act, 1973,

> " Sec. - 349. Application and grant of licence.--(1) When any person desires to obtain a licence to use any enclosed place or building for public resort or entertainment, or to construct any enclosure or building for such purpose, he shall send an application to the commissioner setting forth the name of the owner of the place or building, its situation, size and description, the material of which the enclosure or building is made or proposed to be made, whether it is or is proposed to be permanent or temporary, and the purpose for which it is proposed to be used.
>
> (2) Upon the receipt of any such application, the commissioner shall inspect the place or building in respect of which a licence is required, and may call on the applicant, by notice in writing, to make any alteration or addition in the material or arrangement of the enclosure or building or in the precautions for the safety of the public to be assembled therein, and may refuse to grant a licence until the alteration or addition is made.
>
> (3) (a) If the commissioner after consulting such authority or officer as the

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Government may from time to time by notification direct, is satisfied--

(i) that the enclosed place or building may safely be used for the purpose of public resort or entertainment proposed;

(ii) that no objection, arising from its situation, ownership, or the purpose proposed exists, he shall give to the applicant a written licence, signed by him, specifying the enclosure or building and the purpose for which it is to be used. Such licence shall be in such form and subject to such fee and conditions as the Government may, from time to time, prescribe.

(b) If the commissioner is not satisfied as aforesaid, he may refuse a licence, recording his reasons for refusal in writing.

(4) Every licence granted shall state the period for which it is to continue in force, and shall cease to be in force on the expiration of that period.

Sec. - 350. Revocation or suspension of licence.-- The commissioner may, for reasons to be recorded in writing, revoke or suspend the licence when he has reason to believe--

(a) that the licences has been fraudulently obtained;

(b) that the enclosed place or building has been used for other purposes of public resort or entertainment than that for which the licence was granted;

(c) that the place or building can no longer be safely used for the purpose for which the licence was granted;

(d) that any condition of the licence has been contravened.

Sec. - 352. Power to enter place of public resort to inspect licence or to prevent further use.-- It shall be lawful for any officer of police in charge of a station or of higher rank than head constable or any other officer duly authorised by the Government by notification, to enter at any time any enclosure or building for which licence is required under this Act, to inspect the licence if any has been issued, and, if there is no licence or if the conditions of the licence are not observed and if he sees reason to apprehend imminent danger to the

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public, to prevent the further use of such enclosure or building as a place of public resort or entertainment.

Sec. - 353. Government may revise any proceedings under this Act.-- The Government may call for and examine the record of any proceeding taken under this Act, may call for any report in connection therewith, may make or cause to be made any further inquiry and may pass any order which it may think fit.

Sec. - 358. Power of the Government to pass orders or give directions to municipal councils:- The Government may, either generally or in any particular case, make such order or give such directions as it may deem fit in respect of any action taken or omitted to be taken under section 355, section 356 or section 357."

10. In the light of the above statutory provisions, let us consider as to whether the impugned orders of the Government and the Commissioner, Pondicherry Municipality, are sustainable more particularly in the light of Article 19(1)(g) of the Constitution of India. Let us also consider as to whether the learned Judge is right in quashing the Government Order partially and issuing a direction for considering the applications for renewal of licence in respect of performance of classical dance in the Hotels/Public Resorts of the writ respondents/Petitioners.

11. The main grievance of the respondents/writ petitioners is that the impugned Government Order infringes the very fundamental right conferred on the citizens under Article 19 (1)(g). The said provision and sub-clause(6) are reproduced below,

" 19. Protection of certain rights regarding freedom of speech, etc. - (1) All citizens shall have the right -

.....

(g) to practise any profession, or to carry on any occupation, trade or business.

.....

(6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, [nothing in the said sub-clause shall affect the operation of any

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existing law in so far as it relates to, or prevent the State from making any law relating to, -

(i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or

(ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise]."

Right to freedom is one of the fundamental rights specifically provided in Part-III of the Constitution of India. The above provision gives the citizens of this country the right to practise any profession and to carry on any occupation, trade or business subject to reasonable restrictions. Sub-clause (6) makes it clear that the State is free to make any law, imposing reasonable restrictions in the interests of the general public, and that so long as the profession, occupation, trade or business is not opposed to any law, the State can only regulate and they cannot completely prohibit the citizens from practising such profession, occupation, trade or business. It is not in dispute that the respondents were granted licences under Section 349 of the Pondicherry Municipalities Act, 1973, by the Commissioner, Pondicherry Municipality, for the performance of Indian classical dance in their premises in question.

12. The impugned Government Order, viz., G.O.Ms.No.27/LAS/2005, completely prohibited the grant of licences for performing Indian Classical dance, western dance and floor shows. By the said Government Order, the Government directed the Municipal Authorities not to issue any fresh licence for the above mentioned performances in any permanent buildings as defined under Rule 2(c) of Pondicherry Municipalities (Places of Public Resort and Entertainments) Rules, 1980.

13. It is the contention of the learned counsel for the respondents/writ petitioners that the impugned Government Order, imposing restriction on the municipal authorities not to issue any fresh licence to the petitioners and other public resorts, goes against the freedom and fundamental right to practise any profession or to carry on any occupation, trade or business guaranteed by the Constitution of India. It is also highlighted by the learned counsel that the performance of Indian classical dance programmes is not prohibited in the Act and according to them, the State by way of an executive order, at the most, could only

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regulate the performance and cannot altogether prohibit the performance itself since Indian classical dances are being encouraged by the Government of India and other States.

14. Learned Government Pleader vehemently contended that the learned single Judge having found that the impugned Government Order was valid and legal and borne out of legitimate exercise of powers conferred on the authorities concerned, committed an error in quashing such Government Order to a limited extent, which course cannot be sustained. According to him, the impugned Government Order only imposes a reasonable restriction in the matter of exercise of right to carry on any trade or business as could be seen from the provisions of Section 349 of the Act which prescribes the need to obtain a licence only where such dance shows or performances are required to be conducted in a building and in other respects, such licence is not necessary. It is also highlighted on behalf of the Government and the Municipality that the purpose and object of passing the impugned Government Order is to prevent the inception of such immoral and indecent dance shows in the public premises and for which there is no need to amend the existing laws, as observed by the learned Judge. He also pointed out that the Senior Superintendent of Police has objected to the grant of licence and in the absence of No Objection Certificate from the competent authority prescribed under the Act, the licence could not be granted and therefore the rejection orders are legally valid.

15. It is true that by the impugned order of the Government and the consequential orders of the Pondicherry Municipality, there is no prohibition in running the hotel business. However, the performance of Indian classical dance and other allied dances alone are prohibited since the Senior Superintendent of Police, who is one of the authorities to be consulted before the grant of licence, has submitted a report to the effect that the respondents/hotel owners are misusing the licence and, according to him, under the guise of Indian classical dances, these commercial establishments are staging semi-nude/nude dances. He further submitted that this has invited a lot of criticism from the members of the public who are of the opinion that these shows are nothing but obscene acts. He also stated that on several occasions, the audience indulged in acts of violence resulting in police intervention and registration of criminal cases. Finally, the Officer has opined that all the licensed dance shows under various nomenclatures need to be closed down in order to maintain peace and tranquility in the Territory; and that the Police Department is not in favour of granting any further licence for the conduct of Indian classical dance programmes.

16. As per the Government Order, it is incumbent on the part of the Commissioner, Pondicherry Municipality, to consult the

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officers, viz.,

(a) Additional District Magistrate, Pondicherry, and

(b) Senior Superintendent of Police, Pondicherry

for the grant of licence. Though the Additional District Magistrate has issued NOC for grant of licence, the other authority, viz., Senior Superintendent of Police, has expressed strong objections, because of which, and also by reason of the impugned Government Order, the Commissioner refused to renew the licence granted to the respondents after expiry of the period.

17. Though an argument was advanced that the impugned Government Order was not issued in the name and the authority of the Lieutenant-Governor of Pondicherry but issued only by the Secretary, hence, the same is not permissible; in view of the fact that the learned single Judge has not accepted the said contention and that the writ petitioners have not challenged the same by way of appeal (present appeals only by the Government and the Municipality), we are of the view that there is no need to go into the said aspect.

18. Regarding the attack based on Article 19(1)(g) of the Constitution of India, learned counsel appearing for the respondents heavily relied on a Division Bench decision of the Andhra Pradesh High Court reported in 2003 Crl.L.J. 1360 (Big Way Bar & Restaurant v. Commissioner of Police, Hyderabad). The question before the Division Bench of the Andhra Pradesh High Court was,

> " whether the policy decision taken by the Commissioner of Police, Hyderabad, alleged to be in exercise of the provisions of the Hyderabad City Police Act, 1348 and the Rules made thereunder not to grant or renew any amusement licences to the Bars and Restaurants to conduct singing, music and dance programmes from 25.2.2002 other than Four Star and Five Star hotels and affirmed by the State of Andhra Pradesh would amount to unreasonable restriction offending the provisions of Article 19(1)(g) and Article 14 of the Constitution of India. "

Those Petitions were filed by various Bars/Restaurants' owners of the Twin Cities of Hyderabad and Secunderabad. While considering similar provisions as in the present cases, the Division Bench concluded as follows:-

> " 65. The above provisions of the Act and the Rules made thereunder would show that it is not the intention of the Government to prohibit music, singing and dances in a hotel and restaurant premises and provisions have been made by way of licensing and for regulating the business in public place of amusement. Neither

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the Act nor the rules empower the Commissioner of Police to completely prohibit conduct of singing, music and dance programmes, in the public places of amusement in the interest of general public. Playing of music and singing of songs or performance of dance would cause no harm to the general public nor it is injurious to health, safety and health of the general public and the same is not prohibited. The various provisions would only show that a regulatory mechanism has been made in the rules for grant of licences, suspension or revocation of the same in cases of violations of conditions of licence. Under Rule 112 of the Rules, the Commissioner of Police has been authorised to refuse grant of licence if in his opinion they are obscene or immoral etc. The power of the State to impose reasonable restrictions in respect of any profession or business or for that matter to impose a total prohibition or to regulate the same is not in dispute. But, whether total prohibition of conduct, of music, singing and dances on the ground of obscenity or indecency would be justified is the question that arises for consideration in these matters. It may be that some of the licensees might have violated the licence conditions and are indulging in conduct of dances in vulgarity and cases might have also been booked against them for violation of the conditions of licence. Merely because some of the licensees have violated the conditions of licence or there was opposition by some people can a total prohibition be imposed prohibiting the music and singing and dances when the statute has not allowed such prohibition? In our considered opinion, the same would amount to negating the fundamental right guaranteed under Art. 19(1)(g) of persons who are interested in applying for amusement licences. The right of such persons cannot be deprived merely because others who have been issued licences have violated the conditions of amusement licence or because of sentiments of some section of the public. Therefore, the policy decision taken by the Commissioner of Police prohibiting total prohibition of conduct of music, singing and dances in bars and restaurants, in our opinion, would amount to unreasonable restriction. Any restriction the State wants to bring in must be a reasonable one within the meaning of Art.19(6) of

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the Constitution of India. In Chintamanrao V. State of M.P. (AIR 1951 SC 118), it was held that the limitation imposed on a person in enjoyment of the right should not be arbitrary or of an excessive nature, beyond what is required in the interest of the public. Legislation which arbitrarily or excessively invades the right cannot be said to contain the quality of reasonableness and unless it strikes a proper balance between the freedom guaranteed in Art. 19 (1)(g) and the social control permitted by Clause (6) of Art.19, it must be held to be wanting in that quality. Herein no care has been taken to strike a balance between the freedom guaranteed in Art. 19(1)(g) and the so called general public interest and a total prohibition is sought to be imposed under the guise of obscenity or vulgarity in the performance of dances.

66. If the licensees are violating the conditions and organising semi-nude dances or indulging in other activities encouraging the women dances to expose their bodies in vulgar, obscene and indecent manner, the Commissioner is not without power and he can regulate the same in accordance with the provisions of law including cancellation of licence for such activity. Under sub-section (3) of Section 21 of the Act, it shall always be lawful for the Commissioner of City Police, to refuse licence for or to prohibit the establishment of a place of public amusement or a place of public entertainment by a notorious scoundrel or a bad character. As long as the performance by male and female artists is within the limitation and there is no obscenity or vulgarity in the performance, the same cannot be prohibited nor any restriction can be imposed. Further, if the provisions of the Act and the rules made thereunder are not sufficient to meet the violations of conditions of licence perpetrated by the licencees from time to time it is open to the Commissioner to frame a scheme in exercise of the powers under Section 21 of the Act providing guidelines for running the bars and restaurants and providing punitive measures. Further, it is not in dispute that permissions were given to umber of restaurants in the city and such restaurants/hotels are conducting music, singing and the dance programmes. Therefore, the action of the respondents in denying grant of

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such permissions to others under the guise of a policy would be arbitrary and discriminatory. The State cannot completely prohibit the trade altogether even though it is not inherently vicious or pernicious.

67. ......

68. ......

69. ......

70. ......

71. ... As rightly observed by this Court no guidelines have been provided either in the Act or the Rules to impose total prohibition for grant of amusement licences in general public interest.

72. .....

73. .....

74. The total prohibition underlined by the policy decision is arbitrary and illegal for another reason also. As has been held by the Supreme Court in Chintamanrao Vs. State of M.P. (AIR 1951 SC 118) and Khoday Distilleries Ltd Vs. State of Karnataka only those professions which are inherently vicious or obnoxious or injurious to health, safety and welfare of general public can be prohibited completely because the right to practise profession or to carry on any occupation does not extend to such inherently vicious and pernicious trade or business. By no stretch of imagination, it can be said that the trade or business in music, dance and singing is inherently vicious and pernicious warranting a total prohibition in the interest of general public. Such a restriction is an unreasonable restriction. Singing, music and dancing come under the category of amusement or entertainment. The activity of obscenity or indecency being indulged in such performances can always be remedied by appropriate subordinate legislation or by an executive order. "

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The above Division Bench decision of the Andhra Pradesh High Court is directly on the point and we are in respectful agreement with the said view since total prohibition underlined by way of policy decision is arbitrary and illegal and opposed to Article 19(1)(g) of the Constitution of India. It is made clear that obscenity and indecency being indulged in such performances cannot be tolerated and the same have to be eliminated with iron hand. However, merely because one or two stray instances being taken place, there cannot be a blanket restriction for grant of licence for performance of

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Indian classical and allied dances.

19. In Chandra vs. Govt. of Tamil Nadu (ILR (1996) 1 Madras 1007), while considering the validity of two Government Orders; whereby, the Government directed the planning authorities of the State to get the prior concurrence of the Agriculture Department that the wet lands concerned is not fit for cultivation before according approval to house sites/building plans wherever the private wet lands are involved; after finding that the field is covered by the State Legislature, the Division Bench held that the same cannot be meddled with by the executive in the purported exercise of their power under Article 162 of the Constitution and ultimately quashed those Government Orders. The following conclusion in paragraph No.5 is relevant and the same is extracted here-under:-

> " 5. ..... It is the settled position of law that the executive power under Article 162 of the Constitution is not available, in respect of the subject which is already covered by the legislation. In other words, a field covered by the enactment which is known as covered field cannot be meddled with by the executive in the purported exercise of their power under Article 162 of the Constitution. This has been specifically provided for with a view to ensure that the State also is not above the Rule of law and above the provisions contained in the Constitution."

20. In the decision reported in 1997 (I) CTC 129 (Arunachalam, S. vs. State of Tamil Nadu), the Division Bench, reiterating its earlier view, concluded that, by issuing G.O.Ms.No.542, Municipal Administration and Water Supply Department, dated 29.4.1986, which necessitated No Objection Certificates from the concerned Panchayat/Municipality or Corporation for registration of document, the State has overstepped their power by issuing the impugned Government order in their purported exercise of power under Article 162 of the Constitution. They further observed that if the State Government felt that there was urgency in the matter it would have very well resorted to the provisions relating to the issuance of ordinance. After saying so, the Bench ultimately quashed the impugned Government Order, however, they clarified that their decision does not come in the way of the competent legislature enacting appropriate legislation.

21. Both the above mentioned decisions make it clear that, in the absence of necessary amendment by way of legislation,

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the power given to the competent authorities cannot be taken away by issuance of executive orders. Though learned Government Pleader heavily relied on Section 358 of the Act, a reading of the said provision makes it clear that it would be open for the Government either generally or in any particular case to give such directions as it may deem fit in respect of any action taken or omitted to be taken under Sections 355, 356 and 357 of the Act.

22. In view of the above discussion, the constitutional right guaranteed under Article 19(1)(g), statutory provisions as referred to above and also various decisions, we are in entire agreement with the conclusion arrived at by the learned single Judge. It is made clear that, as rightly observed by the learned Judge, the police can very well invoke the provisions under Section 352 to prevent misuse or abuse of any licence granted or to be granted. It is also made clear that, if, during the course of inspection, the authority/authorities find the licence being misused by exhibiting obscene dances, they are free to take stringent action against all the persons concerned. Apart from this, based on the report of the Police Officer; the licensing authority, viz., Commissioner, Pondicherry Municipality, may either cancel the licence wholly or suspend the same for a particular period.

23. We do not find any valid ground for interference, on the other hand, we are in full agreement with the conclusion arrived at by the learned single Judge. All the Appeals fail and they are dismissed. No costs. Connected Miscellaneous Petitions are closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

JI.

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To

1. The Secretary to Government,
Government of Pondicherry
Local Administration Secretariat,
Pondicherry.

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2. The Commissioner
Pondicherry Municipality,
No.1 Rue Dumas, Pondicherry.

3. The Chief Secretary,
Union Territory of Pondicherry,
Pondicherry.

4. The Under Secretary to Government
Public Administration Department,
Pondicherry.

4 ccs to Spl. Government Pleader Cum S.P.P. Pondicherry sr. 47845 to 47848
2 ccs to Mr.R. Sunil Kumar, Advocate, Sr. 47777 & 47778

W.A.Nos.603, 604, 967 and 990 of 2006 & connected Misceln. Petitions.

VC (CO)
kk 31/10

HIGH COURT OF JUDICATURE MADRAS
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